IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

OP.No. 29391 of 2002(Y)

PETITIONER:

P.UNNIKRISHNAN, S/O.RAGHAVAN NAIR,
52 YEARS, HEAD MASTER, POOVATTUPARAMBA
AIDED L.P.SCHOOL, PARAYATH HOUSE,
POST CHERUKULATHOOR, CALICUT
MEDICAL COLLEGE (VIA), KOZHIKODE DISTRICT.

BY ADV. SRI.P.K.VIJAYAN

RESPONDENTS:

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1. STATE OF KERALA, REP BY SECRETARY
TO GOVT. GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

3. ASST.EDUCATIONAL OFFICER,
KOZHIKODE (RURAL) SUB.DISTRICT,
KOZHIKODE.

4. A.T.ABDUL HAMEED, S/O.AHAMMAD,
NEDUVILEKANDIYIL HOUSE,
KUNNAMANGALAM POST,
KOZHIKODE.(FORMER MANAGER ALP SCHOOL, POOVATTUPARAMBA)

5. V.M.MEENATH, W/O.ABDUL HAMEED,
NEDUVILEKANDIYIL HOUSE,
KUNNAMANGALAM POST, KOZHIKODE.(MANAGER ALP SCHOOL,
POOVATTUPARAMBA

BY ADV. SRI.T.A.SHAJI
SRI.M.S.KIRAN
GOVERNMENT PLEADER SRI. T.T. MAHMOOD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/09/2007, ALONG WITH OP NO. 26482 OF 2002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.29391 OF 2002

ORDER ON C.M.P.NO.49991 OF 2002 IN O.P.NO.29391 OF 2002
DISMISSED.

11.9.07 SD/- S. SIRI JAGAN, JUDGE.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

O.P.NOS.29391,26482 OF 2002

DATED THIS THE 11th DAY OF SEPTEMBER, 2007

JUDGMENT

The petitioner in O.P.No.26482/2002 is the Manager of Poovattuparamba ALPS, Kozhikode and the petitioner in O.P.No.29391/02 is the Headmaster of that school, whom the Manager suspended twice, first on allegations of misconduct and second in view of a criminal case registered against him. The Headmaster is the 4th respondent in O.P.No.26482/02. The Manger is challenging the orders of the original authority and revisional authority whereby the petitioner's request for continuing the Headmaster under suspension beyond the period of 15 days was rejected. The Headmaster has filed O.P.No.29391/02 seeking reinstatement in service pursuant to orders of the Educational Authorities. There is a prayer for disqualification of the Manger also. However, the counsel for the petitioner is not present in O.P.No.29391/02. The learned counsel for the Manager in who is the petitioner in O.P.No.26482/02 submits that the Headmaster has since retired from service, that he has also been paid salary for the period of suspension and therefore the writ petition filed by the Headmaster has become infructuous. Accordingly, O.P.No.29391/02 is closed as infructuous.

2. The facts necessary for disposal of O.P.No.26482/02 may be summarised as under.

3. By order dated 17.8.01, the Manager placed the Headmaster under suspension pending disciplinary action on various allegations of misconduct. The A.E.O. having jurisdiction refused permission to continue suspension beyond 15 days. By order dated 25.8.01 the Manager filed a revision petition in which no orders were passed. Subsequently, a criminal case was charged against the Headmaster as C.C.No.529/01 of Kunnamangalam Judicial Ist Class Magistrate. The Headmaster was the second accused in that case, in which he was charge sheeted for offences under Section 143,147, 148, 449,427 read with Section 149 of I.P.C. In view of the registration of the criminal case, the Manager placed him under suspension by order dated 30.11.01. However, the Manager's application for continuation of suspension beyond 15 days was rejected by the A.E.O. by Ext.P2 order dated 14.12.01 and by another order dated 2.01.2002 the A.E.O directed the Manager to reinstate the Headmaster. Against those orders also the petitioner Manager filed a revision petition before the Government. In the meantime, the Headmaster approached this Court by filing O.P.No.4330/02 complaining that in spite of orders of the A.E.O

declining permission for continuation of suspension and directing reinstatement, the Manager is refusing to reinstate him in service. In that O.P. this Court passed an interim order Ext.P4 holding that the Headmaster is entitled to be reinstated in service and a direction was also issued to recover the salary paid to the teacher from the Manager. Later by Ext.P5 judgment, the original petition itself was disposed of directing disposal of the revision petition filed on 21.1.2001. Pursuant thereto, by Ext.P6 order, the Government rejected both the revision petitions. Ext.P6 order as well as the order refusing permission to continue suspension of the Headmaster pursuant to the criminal case are under challenge in this original petition.

4. The petitioner's contention is that by virtue of the provisions of the K.E.R., on registration of a criminal case the Manager was bound to suspend the Headmaster and therefore the lower authorities had wrongly rejected the application filed by him for approval for continuation of the suspension beyond 15 days. The petitioner further submits that in Ext.P6 order practically there is no consideration of the contention of the petitioner on merits. Instead the Government merely proceeded as if by the interim order the question has been finally decided by this Court which is

not the case. He would further contend that Ext.P4 is only an interim order and on disposal of the original petition by Ext.P5 judgment the interim order is no more in existence and therefore the same could not have been taken into account by the Government in so far as in the final judgment the same has not been referred to or upheld.

5. I have considered the rival contentions of the petitioner in detail. I have heard the learned Government pleader also.

6. The suspension of an aided school teacher is governed by Rule 67 of Chapter XIVA of the K.E.R. Sub rules 1 to 3 thereof read thus:

> "[67. Suspension.- (1) The manager may at any time place a teacher under suspension (a) when disciplinary proceedings against him are contemplated or are pending; or (b) when a case against him in respect of any criminal offence is under investigation or trial or (c) when the final orders are pending in the disciplinary proceedings, if the authority considers that in the then prevailing circumstances it is necessary, in public interest, that the teacher should be suspended from service.
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> (2) The Government or an officer authorised by the Government under section 12 A of the Act may suspend a teacher of an aided school:-
>
> (a) When any disciplinary proceedings are proposed to be taken against him, or
>
> (b) When disciplinary proceedings are pending against him.

> (3) A teacher who is detained in custody on a Civil, Criminal or other proceedings for a period exceeding 48 hours, shall be deemed to have been under suspension during that period, and he cannot draw his pay and allowance, other than subsistence allowance, allowable under the rules, till the final termination of such proceedings".
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> (emphasis supplied)

Going by these provisions, although if the Manager had on allegations of misconduct placed a teacher under suspension, the continuation of the suspension beyond 15 days period would be subject to permission by the A.E.O, going by sub rule 3 of Rule 67 it has to be decided as to whether the A.E.O. had decided correctly in refusing permission. Although the former part of the sub rule mentions detaining in custody beyond 48 hours the latter part of the rule mentions till final termination of the proceedings. There is absolutely no reference about sub rule 3 in Ext.P6. I am of opinion that the Government should address itself to the question as to whether there would be deemed suspension till conclusion of the criminal proceedings. Since the Government has not considered the matter on merits, I feel that the Government should reconsider the revision petition on this question afresh. For this purpose Ext.P6 is quashed. The Government shall reconsider the matter in the light of Rule 67 and pass fresh orders in accordance with law. This shall

be done within a period of two months from the date of receipt of a copy of this judgment after affording an opportunity of being heard to the petitioner as well as the Headmaster. While doing so, the Government shall not be circumscribed by the interim order by this Court and shall consider the matter on merits as to whether going by Rule 67 the Headmaster ought to have been continued under suspension till the disposal of the criminal case.

O.P.No.26482/02 is disposed of as above.

S. SIRI JAGAN, JUDGE

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